IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD.NO. 369 OF 2006

J.Subramanian ... Petitioner/1st Defendant

Vs.

1.S.Saraswathi
2.S.Mohanasundaram
3.S.Illangovan
4.S.Kothandaraman
5.S.Murali
6.S.Arumugam ...Respondents/Plaintiffs 1 to 6

This Civil Revision petition is filed under section 115 of CPC against the order and decretal order dated 11.7.2005 in I.A.No.308 of 2005 in O.S.No.311 of 2001 on the file of the Principal District Munsif Court, Kanchipuram.

For petitioner: Mr.N.Ramanujam

For Respondent:Mr.R.Mubarak Basha

O R D E R

An order of the Principal District Munsif, Kanchipuram made in I.A.No.308 of 2005 to condone the delay of 373 days in filing the application to set aside the ex-parte decree passed in O.S.No.311 of 2001 is under challenge. The suit was filed for declaration that the mutation effected in the name of the 1st defendant/petitioner herein in the property tax register is illegal and invalid.

2. Heard the learned counsel for the petitioner as well as for the learned counsel for the respondents.

3. It is not in controversy that the suit was posted in the list on 10.12.2003, but on that day, the first defendant/petitioner herein who is the contesting defendant was not present and hence he was called absent and set exparte. An application was filed for restoration along with the application

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to condone the delay of 373 days It is averred in the affidavit that the petitioner sustained fracture in his leg on 1.12.2003 and was taking treatment. He was also suffering from Diabetic Millitecy and Osteo Authentic Fracture 2nd,3rd and 4th Mataldisal bone in the left leg and was taking treatment at Chennai. In order to prove the same, he has filed a Doctor's certificate and the application was also objected to by the respondents and hence the lower Court was of the considered opinion that it was not a fit case to condone the delay.

4. A perusal of the order of the learned District Munsif, Kanchipuram would clearly reveal that the petitioner who is first defendant was suffering from leg fracture and diabetic mellitecy and Osteo Authentic Fracture of 2nd,3rd and 4th metaldisal bone. No documents were produced to prove the sickness.

5. Learned counsel would point out that a medical certificate was annexed along with the affidavit filed into the Court. It is true that it was not marked. This contention by the learned counsel is not objected to by the opposite party. Apart from this, the suit was filed for declaration and the written statement was also filed. After framing the issues, the case was listed for hearing. Due to fracture in the leg, the revision petitioner could not present in the Court. Though, there was a delay of 373 days in filing the application, it is fit case where the petitioner can be given an opportunity to put forth his case. Under such circumstances, the delay is condoned subject to the condition that the petitioner shall pay a sum of Rs.1000/- towards cost to the respondents directly within a period of four weeks from today, failing which, the application shall stand dismissed.

6. With the above observation, the Civil Revision Petition is disposed of. No costs.

VJY

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
The Principal District Munsif Court, Kanchipuram.

+ 1 cc to Mr. R. Mubarak Basha, Advocate, SR No.33081
+ 1 cc to Mr. N. Ramanujam, Advocate, SR No.32721

NSM(CO)
SR/13.6.2007

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